IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

FRIDAY, THE 13TH JULY 2007 / 22ND ASHADHA 1929

WP(C).No. 8383 of 2004(W)

PETITIONER:

K.P.KELAPPAN, SENIOR AUDITOR,
OFFICE OF THE ASSISTANT REGISTRAR OF
CO-OPERATIVE SOCIETIES (AUDIT),
VADAKARA, KOZHIKODE DISTRICT.

BY ADV. SRI.MANJERI SUNDERRAJ

RESPONDENTS:
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1. STATE OF KERALA, REPRESENTED BY THE
SECRETARY TO GOVERNMENT, INDUSTRIES DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

2. THE DIRECTOR OF INDUSTRIES AND COMMERCE
THIRUVANANTHAPURAM.

3. THE SENIOR ADMINISTRATIVE OFFICER,
DIRECTORATE OF INDUSTRIES AND COMMERCE,
THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI. P.NANDAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO: 8383/2004 W

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE ORDER NO. A/1406/86 DT. 8/12/86 OF THE ASST. IND. OFFICER, OTTAPALAM.

EXT.P2. COPY OF THE ORDER DT. 18/12/93 ISSUED BY R2.

EXT.P3. COPY OF THE JUDGMENT DT. 8TH SEPT, 1998 IN OP NO. 2765/94 OF THIS COURT.

EXT.P4. COPY OF THE REPRESENTATION DT. 15/10/98 BY THE PETITIONER TO THE GOVT.

EXT.P5. COPY OF THE REPRESENTATION DT. 15/10/98 BY THE PETITIONER TO THE R2.

EXT.P6. COPY OF THE JUDGMENT DT. 5TH JULY 1999 IN OP NO. 2596/99 OF THIS COURT.

EXT.P7. COPY OF THE COMMUNICATION NO. 15654/A2/98/ID DT. 23/11/99 BY THE GOVT.

EXT.P8. COPY OF THE REPRESENTATION DT. 1/08/03 BY THE PETITIONER TO THE R2.

EXT.P9. COPY OF THE JUDGMENT DT. 27TH AUGUST, 2003 IN WPC NO. 27375/2003 OF THIS COURT.

EXT.P10. COPY OF THE JUDGGMENT DT. 6/1/2004 IN WA NO. 2644/00 OF THIS COURT.

EXT.P11. COPY OF THE ORDER GO RT NO. 117/2004/ID DT. 3/2/2004 BY THE GOVT.

EXT.P12. COPY OF THE ORDER NO. EA1/19381/03 DT. 25/2/2004 BY THE R3.

EXT.P13. COPY OF THE ORDER NO. EC5/2359/04(1) DT. 19/7/2004 BY THE DIRECTOR OF INDUSTRIES AND COMMERCE.

EXT.P14. COPY OF THE ORDER NO.EC2/4028/2005 DT. 7/3/2005 BY THE DIRECTOR OF INDUSTRIES & COMMERCE.

RESPONDENT'S EXHIBITS **NIL**

True copy

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K.BALAKRISHNAN NAIR, J.

W.P.(C) No. 8383 of 2004-W

Dated this the 13th day of July, 2007.

J U D G M E N T

The petitioner joined Government service in the Industries Department as L.D.C, on the advice of the Public Service Commission dated 30-4-1974. He was promoted as U.D.C on 26-4-1978 and as Head Clerk on 8-11-1985. While he was working as Junior Co-operative Inspector under the Industries Department, he was appointed by transfer through the P.S.C by order dated 12-11-1986 as Junior Co-operative Inspector in the Co-operative Department. On the basis of that order, the petitioner was relieved from the Industries Department on 8-12-1986. While so, the petitioner moved for repatriation to the Industries Department. The said application of the petitioner and 5 others were allowed by the Government by Ext.P2 order dated 18-12-1993. The said order was challenged by two U.D. Clerks before this Court by filing O.P.2765 of 1994 . Finally, based on the Full Bench decision of this Court in Balakrishnan Nair Vs. Ram Mohan Nair (1998 (1) KLT 766 (FB), the said O.P. was dismissed by Ext.P3 judgment dated 8-9-1988. Based on the said judgment, the petitioner moved for implementation of Ext.P2 order by submitting Exts.P4 and P5 representations. In the meantime, the petitioner was promoted as Senior Co-operative Inspector in the Co-operative Department. When his representations were not

considered, he filed O.P.2596 of 1999. Te said original petition was disposed of by Ext.P6 judgment dated 5-7-1999 directing to implement Ext.P2. Since there was a status quo order from the Apex Court against the Full Bench decision in Balakrishnan Nair's case, no further action was taken in the case of the petitioner. Finally, the Civil Appeal was dismissed by the Apex Court on 22-4-2003. Thereafter, the petitioner filed Ext.P8 representation claiming implementation of Ext.P2. Again he approached this Court by filing W.P.(C) 27375 of 2003. The said writ petition was disposed of on 27-8-2003 by Ext.P9 judgment directing to revert the petitioner to the Industries Department, within two months. Finally, the Government by Ext.P11 order dated 3-2-2004 reverted the petitioner to the Industries Department as U.D.C Further promotion which he would have earned, had he continued in the Industries Department was not granted. So, the reversion to the parent department became a reversion to a lower post. So, this writ petition was filed challenging Ext.P11 and also the consequential order posting him in the scale of pay of UDC, Rs.4,000-6090, a true copy of which is produced as Ext.P12. This Court granted interim stay of those orders and therefore the petitioner continued in the Co-operative Department and retired from service. Now, the prayer of the petitioner is to make the interim order absolute and thereby cancel his reversion to the Industries Department.

2. I heard the learned Government Pleader for the respondents also. In view of the retirement of the petitioner, I think it is unnecessary to go

into the merits of the case. The petitioner's submission that he does not want to go to the Industries Department has to be accepted. Accordingly, it is ordered that Exts.P11 and P12 shall not be implemented and the petitioner shall be treated as having retired from the Co-operative Department. His pensionary claims shall be settled accordingly.

The Writ Petition is disposed of as above.

K.BALAKRISHNAN NAIR,
JUDGE.

MS